

United States Court of Appeals for the Federal Circuit

FOR IMMEDIATE RELEASE

January 22, 2007

The United States Court of Appeals for the Federal Circuit proposes to amend its rules by adopting Federal Circuit Rules 28(a)(15) and (16), Rule 28(j), Rule 30(k), and Rules 31(b), (e), and (f); and by deleting Federal Circuit Rule 32(e). These rule changes would require the filing of a digital version of every brief and appendix filed by a party represented by counsel, unless counsel certifies that submission of a brief or appendix in digital format is not practical or would constitute hardship. The requirements for the filing of paper copies of the briefs and appendices would continue unchanged. Contemporaneously with the adoption of these proposed rules, the court proposes to withdraw Federal Circuit Rule 32(e), which presently permits the filing of briefs on compact disc-read only memory (CD-ROM) media. In compliance with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, as amended, the court proposes to adopt Federal Circuit Rule 28(j) and Rule 30(k) to protect certain personal privacy and security information, and to post on the PACER page of the court's Internet website copies of the digital versions of all briefs and appendices filed in accordance with proposed Federal Circuit Rule 31(f) that are not redacted, sealed, or otherwise restricted by court order.

Comments in the format attached should be sent to:

Office of the Clerk
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W.
Washington, D.C. 20439

Comments must be received by the close of business on February 16, 2007.

Proposed Federal Circuit Rules 28(a)(15) and (16) and Rule 28(j)

Rule 28. Briefs

- (a) **Contents of Brief; Organization of Contents; Addendum; Binding.** Briefs must be bound as prescribed in Rule 32 of the Federal Rules of Appellate Procedure and must contain the following in the order listed:

...

- (15) the certificate of impracticality or hardship, if required by Federal Circuit Rule 31(f)(1).

- (16) the certificate of virus protection required by Federal Circuit Rule 31(f)(7).

...

(j) **Personal Privacy and Security.**

- (1) **Policy of the Judicial Conference of the United States, and the EGovernment Act of 2002, as amended.** To assist the court in protecting personal privacy and other legitimate interests while also promoting electronic access to case files, parties shall refrain from including, or shall partially redact where inclusion is necessary, from both paper and digital versions of all public versions of briefs filed with the court, all personal data identifiers specified by any privacy policy of the Judicial Conference of the United States (e.g., full names of victims and minors, financial accounts numbers, full social security numbers, dates of birth—see <http://www.privacy.uscourts.gov/b4amend.htm>), unless otherwise ordered by the court.
- (2) Parties filing briefs containing the personal data identifiers referenced above shall file one of the following:
- (a) **Nonconfidential and Confidential Versions.** A nonconfidential, public version using shorthand references to the personal identifiers as specified in the privacy policy of the Judicial Conference, and an unredacted confidential version of the full document; or
- (b) **Reference List.** A nonconfidential public version with the shorthand references to the personal identifiers as specified in the privacy policy of the Judicial Conference, and a confidential reference list. The reference list shall contain the complete personal data identifier(s) and the shorthand identifier(s) used in its(their) place in the filing. All references in the case to the shorthand identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed as a confidential document, and may be amended as of right. The unredacted version of the document or the reference list document shall be retained by the court as part of the record. The version with

the shorthand references to the personal data identifiers will constitute the public record; or

- (c) **Party Otherwise Filing Confidential and Nonconfidential Briefs.** If a party is otherwise filing confidential and nonconfidential briefs pursuant to Federal Circuit Rule 28(d), and there are contained therein personal data identifiers referenced above, such identifiers should be treated within the confidential and nonconfidential versions as described in (a) above. It is not necessary to file a separate additional confidential version.
- (3) **Responsibility for Redactions.** The responsibility for redacting personal identifiers rests solely with the parties and their counsel. The Clerk will not review documents filed for compliance with this rule.

Proposed Federal Circuit Rule 30(k)

Rule 30. Appendix to the Briefs

. . .

(k) Internet Publication. If a party refers in appendices to materials that such party determines for good reason should not be made available to the public on the court's Internet website, two versions of the appendices must be filed: a nonconfidential, public version with the restricted materials redacted, and an unredacted confidential version of the full document. See, for example, Federal Circuit Rule 28(j)(1).

(1) Responsibility for Redactions. The responsibility for redacting restricted materials from the appendices and for assuring that all materials contained in the nonconfidential, public versions of the appendices are freely available for publication on the court's Internet website rests solely with the parties and their counsel. The Clerk will not review documents filed for compliance with this rule.

Proposed Federal Circuit Rules 31(b), (e), and (f)

Rule 31. Serving and Filing Briefs

. . .

(b) Number of Copies. Except for briefs containing material subject to a protective order (see Federal Circuit Rule 28(d)), 12 copies of each brief, including the original or a copy designated as the original, must be filed with the court and 2 copies must be served on the principal counsel for each party, intervenor, and amicus curiae separately represented. A pro se party who chooses to file a formal brief must file an additional copy, unbound, to comply with Federal Circuit Rule 31(f)(2).

. . .

(e) Informal Brief; Time for Filing; Number of Copies.

. . .

(4) Number of Copies. An original and 3 copies of each informal brief must be filed with the court and one copy must be served on each party. An additional copy, unbound, must be filed to comply with Federal Circuit Rule 31(f)(2).

(f) Digital Version of Briefs and Appendices.

(1) Filing requirement. A digital version of every brief and appendix filed by a party represented by counsel in an appeal docketed after the effective date

of this rule must be submitted to the court, unless counsel certifies that submission of a brief or appendix in digital format is not practical or would constitute hardship. See Federal Circuit Rule 28(a)(15). Parties not represented by counsel may not file digital versions of any filed papers.

- (2) **Filing of Unbound Copies.** Any party, whether represented by counsel or not, who does not file a digital version of a brief or appendix, must file one unbound copy of the paper version to facilitate scanning by the court. If confidential and nonconfidential versions of a brief and appendix are filed, then the party must file an unbound copy of both the confidential and nonconfidential versions.
- (3) **Time of Filing of Digital Version.** In addition to the required number of paper copies, a digital version of each brief and appendix required under this rule must be furnished to the court no later than five business days after the paper version is filed. The paper version shall be considered the “official” version for purposes of compliance with the rules.
- (4) **Manner of Filing.** The digital versions must be furnished to the court over the Internet following the detailed instructions appearing on the court's web page.
- (5) **Format of Digital Version.** The digital version must be in Portable Document Format (also known as “PDF” or Acrobat format) and shall be generated whenever possible by saving in PDF format from the original word processing file or, if necessary to protect confidential information, from a redacted copy thereof. It is encouraged, but not required, that the PDF documents be saved with commenting enabled. Only if an original word processing file or redacted copy thereof is not available may a scanned PDF image be included in a digital version of a filed brief or appendix.
- (6) **Content.** The digital version must contain the entire brief or appendix, including any supplemental material that is bound with the paper version. The digital version, including all original and scanned materials, shall be furnished as a single PDF file. A manual signature need not be included on the digital version. At the conclusion of the briefing and no later than thirty days prior to oral argument, the parties are encouraged, but not required, to furnish the court with a single PDF file containing copies of a full set of the previously filed briefs and appendices (confidential versions only if both confidential and nonconfidential versions were filed), with hyperlinks to the record and to cited authorities.
- (7) **Virus Protection.** Each party submitting a digital version must certify that the document has been scanned for viruses and that no virus has been detected. See Federal Circuit Rule 28(a)(16).
- (8) **Confidential Briefs and Appendices.** If a party files confidential and nonconfidential sets of briefs or appendices in compliance with Federal Circuit Rules 28(d), 28(j)(2), 30(h), or 30(k), corresponding digital versions of both the “confidential” and “nonconfidential” paper versions shall be furnished. The court will apply to the digital version of a confidential

document the same limits of availability to the public as apply to the paper versions, as set forth in Federal Circuit Rules 28(d)(3) and 30(h)(3).

- (9) **Corrections and Supplements.** This rule shall apply to corrected and supplemental briefs and appendices.
- (10) **Furnishing of Copies.** The filing party must furnish a copy of the digital version of each digitally filed document to each party separately represented by counsel.

(As amended _____ 2007.)

FORMAT FOR PROPOSING CHANGES TO FEDERAL CIRCUIT RULES

Current Rule	Proposed Rule	Rationale
If there is an existing rule or internal operating procedure, set it forth verbatim in this column.	When there is an existing rule, please put it verbatim in this column with the deletions lined out and the new material highlighted. If there is no pre-existing rule, simply set forth the proposed rule.	Provide as much background and rationale as you believe is necessary.

The Court would appreciate written submissions being accompanied by a diskette annotated with the word processing and virus scanning programs used.